

FINAL STATEMENT OF REASONS
PROPOSED TEXT OF REGULATIONS OF THE
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH
CALIFORNIA CODE OF REGULATIONS

Title 8: Chapter 3.2

Subchapter 2, Regulations of the Division of Occupational Safety and Health
Article 2.7 Approval of Asbestos Training and Course Providers

Adopt and incorporate Section 341.17: Approval of Asbestos Cement Pipe Training and Asbestos Cement Pipe Course Providers for the Purpose of Employer Exemption from Registration Requirements into Article 2.7 to specify the requirements for approval of training conducted to qualify for exemption from Registration.

There are no modifications to the information contained in the Initial Statement of Reasons other than the following sufficiently related modifications made during the 15-day notice issued on July 29, 2003:

In subsection (e), **Process of Application**, both (1) the time allowed for the Division to determine that an application is approved or to identify deficiencies, and (2) the time allowed for the Division to evaluate any subsequent material submitted to correct deficiencies are reduced. The Division agrees with the recommendation made in comments on the original proposal, that each of these activities can reasonably be accomplished in five fewer business days than first proposed. In the same subsection, a re-statement of the application fee is deleted. This number already appears where it belongs, in subsection (d), **Application Fee**.

In subsection (f), **Training Records**, a three year records retention limit is proposed. This makes clear, as requested in a comment received during the 45-day review period, that training course providers are not obligated to maintain records indefinitely. The three year period was chosen because of the similarity between records required in this proposed regulation and those addressed in the EPA Model Accreditation Plan which specifies a three year limit.

Summary and Response to Written and Oral Comments

List of Written Commenters:

1. Letter from Joel M. Cohen, The Cohen Group, 9/20/02
2. Letter from Nancy Moorhouse, Teichert Construction, 10/8/02
3. Letter from William R.E. Jackson, Granite Construction Incorporated, 10/14/02
4. E-mail from Pamela Hoover, Safety Specialist, Helix Water District, 10/21/02
5. Letter from Nancy Moorhouse, Teichert Construction, August 14, 2003, in response to the 15-day Notice of Proposed Modifications issued on July 29, 2003

List of Oral Commenters from the October 21, 2002 Public Hearing:

1. William R.E. Jackson, Granite Construction Incorporated
2. Neta Snider, Environmental Safety Training Professionals

Summary and Response to Comments

Comment 1 (Joel M. Cohen and Nancy Moorhouse)

- The meaning of “hands-on” training in Section (b)(1)(E) should include classroom demonstrations and the use of visual training aids.

Response 1

- The intent of Section (b)(1)(E) is that course content includes experience with actual pipe and with tools that will be used in asbestos-cement pipe operations. Demonstrations and visual aids may not be substituted for hands-on instruction, but are not prohibited for use in conjunction with hands-on instruction.

Comment 2 (Joel M. Cohen, Nancy Moorhouse, and William R. E. Jackson)

- The record keeping requirement in Subsection (f) is unreasonable and for contractors who hire new employees for each of many small projects, could result in a large volume of records. A records retention limit should be established such as the limitation in section 3203.

Response 2

- Only (1) the date of the training, (2) names of trainees and the instructor, and (3) the Division approval number need to be maintained. It is necessary and reasonable for the Division to have access to this information in order to assure compliance with the approved training requirement. In response to this comment, however, the Division proposes to establish a three year retention period for the training records with the requirement that copies of any records to be purged by the Trainer after that time be submitted to the Division. In a similar way, the EPA, in their Model Accreditation Plan, sets a minimum three year retention requirement for records of training mandated by AHERA. The proposed limit on records retention would not affect the Division’s authority to make a request for records at any time as provided for in subsection f(2).

Comment 3 (Nancy Moorhouse)

- Shorter time for initial course training (Section (b)(1), e.g. two (2) hours, may be sufficient based on the experience of the employers’ workforce needing the required training.

Response 3

- Work activities that are subject to this regulation are limited to a single asbestos-containing product, namely asbestos cement pipe. The training necessary to adequately prepare workers and supervisors may be less complex than training required to prepare for abatement of any asbestos-containing building material from any type of structure. However, it should be remembered that *forty hours* is the mandated duration for initial training of asbestos abatement workers and supervisors. The Division believes that the proposed four hours is minimal even considering the differences in scope.

Comment 4 (Nancy Moorhouse)

- If asbestos cement pipe is used in training, there will be economic impact on trainers/employers for the cost of supply and proper disposal of unusable pipe that is used for training purposes.

Response 4

- Asbestos cement pipe is not required for hands-on training in the proposed regulation. However, if it is used, it must be disposed of properly and trainees must be provided with suitable protection. No costs need be incurred, as there are alternatives available.

Comment 5 (William R.E. Jackson)

- A written exam and practical demonstration would be a more effective way to determine if the employees understand the potential hazards and can safely perform the tasks than the required four (4) hours of training (Section (b)(1)) for workers and supervisors

Response 5

- The Division is directed by the Labor Code (§9021.9) to develop requirements for a task specific training program, and therefore is not free to substitute a written exam and practical demonstration. The Division believes that four (4) hours is the minimum amount of time needed to convey the required information (see the response to Comment 3).

Comment 6 (William R.E. Jackson)

- Section (b)(2). A practical demonstration would be a more effective way to determine if the employees understand the potential hazards and can safely perform the tasks than the required refresher course of two (2) hours.

Response 6

- Two hours, on an annual basis, seems a minimal commitment for refreshing employees concerning safe work practices for AC pipe operations. Nothing in the proposed regulation prohibits making “a practical demonstration” part of the annual refresher training. The Division therefore declines to eliminate the proposed two-hour refresher requirement in favor of a “demonstration” of unspecified duration.

Comment 7(William R.E. Jackson)

- Sections (c) (1) and (2), and (e). The Division should objectively evaluate the information submitted in the application and additional information should be given as to what would cause an application not to be approved.

Response 7

- The Division will evaluate applications using the criteria outlined in subsection (b) of this regulation. The topics in this subsection have been adapted from the curriculum presented in the employee training sections of the currently adopted regulations dealing with working with asbestos – 8CCR1529 and 8CCR341.16, Appendix A. Specific reference is made in this case to AC pipe. Training requirements are simplified by the fact that this proposed regulation addresses a single asbestos-containing product subject to a limited number of different operations each with available control techniques. Submitted training plans which do not address all of the required topics and/or which do not meet the minimum duration requirement will not be approved.

Comment 8 (William R.E. Jackson)

- Section (d) application fees. The \$200 initial course and \$100 refresher course fees are excessive in light of the amount of time it may take the division to evaluate and approve the training courses.

Response 8

- LC 9021.9(c) directs the Division to charge training entities fees sufficient to cover the costs of administering the program for approval of training courses directed to workers engaged in operations involving asbestos-containing construction materials. The fees set in 8 CCR 341.16 (Approval of Asbestos Training and Course Providers for Training Requirements Relating to Asbestos Related Work and AHERA) for construction craft workers are identical to the proposed fees. We believe this training to be comparable. Especially considering that course evaluations are conducted only prior to initial approval – there is no periodic

renewal fee -- the Division believes that the proposed fees are very reasonable, and therefore declines to make the requested change.

Comment 9 (William R.E. Jackson)

- Section (e)(1). The processing time of 30 business days is too long to approve the initial information that is submitted for the training course; it should be approved within 15 business days of receipt. In addition, the 20-business day processing time for processing additional information is too long to approve the training course; it should be approved within five business days of receipt. More specific information on what it would take to have an application considered approved should be provided.

Response 9

- In response to the comment, the Division proposes (1) to reduce the time allowed to approve an application or to determine that it is deficient from thirty days to twenty-five days, and (2) to reduce the time allowed for evaluation of material submitted to correct deficiencies from twenty days to fifteen days.

Comment 10 (William R.E. Jackson)

- Section (g), revocation of course approval. This section is unclear; language that is more specific should be added to define what would be “good cause” for revocation of an approval.

Response 10

- “Good cause” has the meaning that would be commonly understood by regulated trainers and by the Division. It includes, for example, submitting false information to the Division in an application, creating false records, or blatant violation of requirements in the regulation.

Comment 11(Pamela Hoover)

- Employers should be excused from training requirements if their employees demonstrate, through knowledge and experience, that they understand the hazards of working with asbestos cement pipe and the appropriate safe work methods that must be followed.

Response 11

- Conducting Division approved training, as addressed by this proposed regulation, is one of the conditions which must be met by employers who engage in AC pipe work and who don't want to register as asbestos abatement contractors. An excuse from the training requirements would re invoke the registration requirement. Since one of the purposes for the regulation is to make it possible for employers to meet the “approved training” condition, the Division declines to make the requested change.

Comment 12 (Pamela Hoover)

- No required length of time for training needs to be specified in these regulations.

Response 12

- It would be inconsistent with the currently adopted regulation governing approval of other asbestos training (the five AHERA disciplines and construction craft workers in 8CCR 341.16) to specify course content but not course duration. The Division believes that no adequate definition of training can be made without addressing course duration. The response to Comment 3 addresses the reasoning behind the particular duration proposed.

Comment 13 (Pamela Hoover)

- Employers should be excused from training requirements if their employees have received A/C pipe training within the last year even if that training was done by another employer.

Response 13

- Yes, such training would be acceptable if it were provided by any training provider approved under this regulation within the one-year timeframe.

Comment 14 (Neta Snider)

- An inquiry was made whether or not student roster fees similar to those included in the regulation that governs approval of AHERA training are part of this proposed asbestos-cement pipe regulation.

Response 14

- The proposed regulation does not require that rosters of trained students be submitted to the Division and therefore no roster fees are included.

Comment 15 (Nancy Moorhouse)

- Subsection(f). There is no reason to require course providers to maintain records as part of the approval process.

Response 15

- This comment on subsection (f) was received in response to the Notice of Proposed Modifications, and although it did repeat an earlier comment provided during the 45-day notice, the comment could still apply to the modified language. All the other comments about the rest of the proposed subsections in the commenter's August 14, 2003 letter were about parts of the proposal not modified in the 15-day notice and therefore not considered since they were outside the scope of issues addressed in the 15-day Notice. The modification proposed to subsection (f) only added a minimum records retention period. This was done as the result of the Division having accepted a suggestion made by another commenter, and limits demands on approved trainers by making it clear that training records need not be kept indefinitely. See the response to Comment 2 for the rationale. Therefore, no further modifications are necessary in response to the 15-day comment.

Technical Documents Relied Upon

None.

IDENTIFIED ALTERNATIVES THAT WOULD LESSEN ADVERSE
ECONOMIC IMPACT ON SMALL BUSINESS

No alternatives considered would lessen economic impact. It is anticipated that there will be no adverse economic impact on small businesses due to implementation of these proposed regulations.

Specific Technology or Equipment

This proposal will not mandate the use of specific technologies or equipment.

Business Impact

This regulation will not have a significant adverse economic impact on businesses.